

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

John P. McKiel
3015 Jaeger Road
Lorain, Ohio 44053
and

Elinor R. McKiel
3015 Jaeger Road
Lorain, Ohio 44053

Plaintiffs,

vs.

City of Lorain, Ohio
c/o Patrick D. Riley, Esq.
Lorain City Law Director
3rd Floor Lorain City Hall
200 West Erie Ave.
Lorain, Ohio 44052
and

“Unconstitutional Actor(s)”
names and addresses
presently unknown

Defendant(s).

Case No.

Judge:

Magistrate:

Plaintiffs’ Complaint

(Jury demand endorsed hereon)

Introduction

1. This is a direct action by Plaintiffs John P. McKiel and Elinor R. McKiel against the defendant City of Lorain, Ohio an Ohio municipality and political subdivision as authorized by direct suit against it by virtue of the decision of *Knick v. Township of Scott, Pennsylvania, et al.*, 588 U.S. ____ (2019) Decided June 21, 2019, for its violation of The Takings Clause of the Fifth Amendment and its refusal to pay

plaintiffs Just Compensation for the takings and damages Lorain has caused to plaintiffs McKiels. It also seeks to presents a 42 U.S.C. §1983 claim upon discovered defendants who determined not to pay the plaintiffs for their real property while taking their real property.

Jurisdiction & Venue

2. This Court has jurisdiction over this matter by virtue of the decision of *Knick v. Township of Scott, Pennsylvania, et al.*, 588 U.S. ____ (2019) Decided June 21, 2019, This Court has original jurisdiction of this action as it raises issues arising under the Constitution, laws, or treaties of the United States. See: 28 U.S.C. §1331.
3. Venue lies in this Court pursuant to 28 U.S.C. §1391(b) because all or a substantial part of the events or omissions giving rise to the claims occurred in Lorain County, Ohio within this District and Division. Venue also is proper as all of the parties reside within the boundary of this District and Division.

Count One

Violation of The Takings Clause Fifth Amendment

4. Plaintiffs incorporate by reference the foregoing allegations as set forth previously above in this complaint as if fully rewritten herein.
5. Plaintiffs John P. McKiel and Elinor R. McKiel are the owners of real property located within the municipal boundaries of the City of Lorain.
6. Defendant the City of Lorain, Ohio is a statutory municipal city and political subdivision of the State of Ohio.
7. Plaintiffs John P. McKiel and Elinor R. McKiel assert that the City of Lorain, Ohio has taken their real property as a direct and proximate result of government-induced

flooding that their real property directly related to its approval of a change to the natural flow of the watershed thereby creating nuisance conditions to plaintiffs' real property; Defendant did change the natural flow of the watershed and failed to compensate the plaintiffs for the taking of a new perpetual drainage easement and its continuing perpetual nuisance and damages caused to their real property.

8. Plaintiffs John P. McKiel and Elinor R. McKiel have presented their claims for resolution to the Defendant City of Lorain, Ohio by satisfaction to its Law Director and to its Lorain City Council numerous times all to no avail.
9. Defendant City of Lorain, Ohio has formally asserted that it is immune from suit and has no liability to plaintiffs and that it can take their real property interests without having to pay any just compensation.
10. Section 19, Article I, Ohio Constitution, and the Fifth Amendment and Fourteenth Amendment to the Constitution of the United States of America require that compensation be paid to a citizen landowner when the state government decides to take and/or causes damages to an owner's property.
11. Defendant City of Lorain, Ohio has violated The Takings Clause of the Fifth Amendment and has refused to pay plaintiffs Just Compensation and claims it is immune from having to pay a compensation for its taking.
12. Defendant City of Lorain, Ohio is malicious and obstinate in its refusal to provide compensation to plaintiffs and fails obey the commands of the Fifth Amendment and of the Constitution both State and Federal.
13. Plaintiffs as a direct and proximate result of the unconstitutional behaviors of defendant and its agents are damaged by such behaviors, actions, and conduct.

Second Claim

Violation of Section 42 U.S.C. §1983

14. Plaintiffs incorporate by reference the foregoing allegations as set forth previously above in this complaint as if fully rewritten herein.

15. 42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress,...". [edited/condensed] 42 U.S.C. § 1983.

16. Unknown agents of the defendant City of Lorain, Ohio, possibly including members of the Lorain City Council and the Lorain City Administration hereinafter yet identified, hereinafter identified as defendant "Unconstitutional Actor(s)" have under color of law caused plaintiffs to be subjected to the loss and deprivation of their rights, privileges, or immunities secured by the Constitution and laws as described in this complaint.

17. Plaintiffs as a direct and proximate result of the unconstitutional behaviors of defendant City of Lorain, Ohio and its currently Unknown agents of the defendant City of Lorain, Ohio have been damaged by such unconstitutional behaviors, actions, and conduct.

Wherefore, Plaintiffs John P. McKiel and Elinor R. McKiel demand judgment against Defendant City of Lorain, Ohio and respectfully pray that this Court:

A. Issue a declaratory judgment that the acts, policies, customs, practices, applicable ordinances and procedures of defendant being used against the plaintiffs and

plaintiffs' property in this matter violate and continues to violate the plaintiffs' constitutional and statutory rights as guaranteed by the Fifth and Fourteenth Amendment to the Constitution of the United States of America, Section 19 of Article I of the Ohio Constitution, and Ohio statutory law of eminent domain.

- B. Order that the plaintiffs John P. McKiel and Elinor R. McKiel be granted compensatory damages for the taking in the sum of \$500,000.00.
- C. Order defendant City of Lorain, Ohio to initiate eminent domain proceedings for the perpetual drainage easement and taking of their real property accomplished by the permanent shift of the watershed and the consequent damages it is responsible for as a result of the nuisance damages, government-induced flooding as is being experienced by John P. McKiel and Elinor R. McKiel upon their real property.
- D. Order each defendant to cease their unconstitutional behaviors toward Lorain Citizens and John P. McKiel and Elinor R. McKiel.
- E. Grant such further relief as the Court may deem proper, including all other relief to which the plaintiffs may be justly and properly entitled, and including further all litigation costs, experts fees, an award of their attorney's fees under 42. U.S.C. § 1988 and for all such other and further relief as this Court deems proper.

Robert J. Gargas Co., L.P.A.

By: 

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Jury Demand

The Plaintiffs hereby demand a trial by jury on all issues so triable.

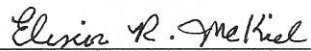
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By: 
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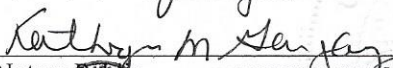

State of Ohio/Lorain County ss:

VERIFICATION

Elinor R. McKiel, first being duly sworn, deposes and says that the allegations contained in the above Complaint are true as she verily believes.


Elinor R. McKiel

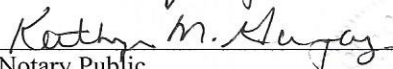

Sworn to before me and subscribed in my presence this 15 day of July, 2019.


Notary Public
 KATHRYN M. GARGAS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 6/28/23 3/23

John P. McKiel, first being duly sworn, deposes and says that the allegations contained in the above Complaint are true as he verily believes.


John P. McKiel

Sworn to before me and subscribed in my presence this 15 day of July, 2019.


Notary Public
 KATHRYN M. GARGAS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 6/28/23 3/23